

### **REMARKS**

Claims 1-11 are pending in the above-identified application. Claims 1 and 2 have been amended in accordance with the suggestions indicated in the Office Action as noted below. Claims 7 and 8 have been amended as supported at page 19, lines 19-21 and lines 36-39, respectively, of the specification. Support for new claims 10 and 11 is found at page 19, lines 30-39 of the present specification.

#### **Unity of Invention Issues**

Applicants acknowledge that the Unity of Invention Requirement has been reduced to the extent that pending claims 1-6, 8 and 9 are now being examined. Claim 7 is presently withdrawn from further consideration. It is noted that claims 7 and 8 have been amended such that both of these claims may now be acceptable to the Examiner for consideration. Applicants appreciate the reduction in the Requirement. Applicants respectfully maintain a traversal with respect to withdrawal of claim 7 from consideration at this time, based on the same reasons indicated in the previous Response filed May 25, 2007.

#### **Arrangement of Specification**

The specification has been amended so as to insert some sub-heading in accordance with the suggestions stated at pages 3-4 of the Office Action dated June 28, 2007.

#### **Issues under 35 USC 112 and 101**

Claims 1-6, 8 and 9 have been rejected under 35 USC 112, second paragraph, as being indefinite; and claim 8 has been rejected under 35 USC 101 as being improper "use" claim.

Claims 1 and 2 have been amended in accordance with the suggestions stated in the Office Action. Claim 8 has been amended. Consequently, it is submitted that the bases for these rejections have been removed.

Removal of Double Patenting Issue

Claim 1 has been provisionally rejected on the ground of obviousness-type double patenting as being unpatentable over claim 1 of U.S. Serial Application No. 10/484,250 (U.S. Patent Publication 2005/0261314 or U.S. '314).

In response to the above-noted rejection, it is noted that claim 1 has been amended so as to limit the definition of substituent "X". Because of this change to claim 1, the scope of the claims of the present application no longer overlap with the scope of any of the claims of the pending U.S. '314 application. It is additionally submitted that the mere similarity of chemical structure between the compounds of the present application and those claimed in U.S. '314 fails to provide an adequate basis for concluding that the compounds claimed in the present application would have been "obvious" over the compounds claimed in the U.S. '314 application. Consequently, it is submitted that there fails to be any adequate basis for the above-noted rejection, such that this rejection should be withdrawn.

Issues under 35 USC 102(b)

Claims 1-3, 5 and 6 have been rejected under 35 USC 102(b) as being anticipated by Heimbach '065 (USP 2,444,605) in view of "RN 856864-33-0" (the "STN" reference). This rejection is respectfully traversed based on the following reasons.

**Interview Patent Examiner**

The Patent Examiner and his Supervisor are thanked for conducting a personal Interview with the Attorney of record and a representative from the Assignee on August 8, 2007. As indicated at Interview and summarized in the Interview Summary form,

"The examiner and the applicants agree that the structure of the prior art...STN structure...[corresponds] in scope with applicants' claims. However the compound which is used in the rejection is not expressly taught in the patent reference. Examiner

and applicants both agree that a 102(b) reference is not present. A potential 103 rejection exists, and the matter will be investigated during the next action.”

In addition to this summary it is noted that a careful review of Heimbach ‘605 indicates that the only apparent aminotriazolopyrimidine compound disclosed by this reference is Compound (10) at column 4, lines 37-45. It is further evident that Heimbach ‘605 requires that all of the disclosed aminotriazolopyrimidine compounds have a hydroxy group bonded to the 7-position. However, the other cited STN reference discloses some additional aminotriazolopyrimidine compounds wherein an amino group is bonded at the 7-position, which is completely inconsistent with the disclosure of Heimbach ‘605, despite the fact that the STN reference purportedly is an abstract summary of the Heimbach ‘605 disclosure. It was agreed at the Interview that the STN reference includes some incorrectly identified compounds which fail to be disclosed by Heimbach ‘605. Consequently, the Examiner indicated that he will withdraw the above-noted rejection based on “anticipation”.

In addition to the above, it is submitted that there fails to be any reasonable basis for asserting that the present claims would have been “obvious” in view of either of the Heimbach ‘605 or STN reference. Heimbach ‘605 fails to disclose any compounds wherein the amino group is bonded at the 7-position. Heimbach ‘605 also fails to disclose any synthetic route for obtaining an aminotriazolopyrimidine compound wherein the amino group is bonded at the 7-position. Still further, it is submitted that Heimbach ‘605 is directed to compounds used as stabilizers for photographic emulsions, in contrast to the fungicidal compounds claimed in the present application. Consequently, a person skilled in the art would very likely not have an adequate motivation to change the structure of the compounds described in Heimbach ‘605 for the purpose of improving the fungicidal properties, since Heimbach ‘605 fails to address or recognize any problems arising in the fungicidal technical field due to the fact that Heimbach ‘605 is directed to compounds in the photographic field.

The cited STN reference would fail to support an allegation of obviousness against the present claims since this reference is flawed in that the disclosed example of

aminotriazolopyrimidine compounds having an amino group in the 7-position fail to correspond to the summarized synthetic routes also summarized in this reference, and further fail to correspond to the compounds and synthetic routes disclosed in Heimbach '605.

In conclusion, it is submitted that the disclosures of Heimbach '605 STN reference fail to support a reasonable allegation of obviousness against any of the claims of the present application, such that this type of rejection should not be pursued by the Examiner going forward.


It is submitted for the reasons above that the present claims define patentable subject matter such that this application should now be placed in condition for allowance.

If any questions arise in the above matters, please contact Applicant's representative, Andrew D. Meikle (Reg. No. 32,868), in the Washington Metropolitan Area at the phone number listed below.

If necessary, the Commissioner is hereby authorized in this, concurrent, and future replies, to charge payment or credit any overpayment to Deposit Account No. 02-2448 for any additional fees required under 37 C.F.R. §§ 1.16 or 1.17; particularly, extension of time fees.

Dated: September 27, 2007

Respectfully submitted,

By   
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Andrew D. Meikle  
Registration No.: 32,868  
BIRCH, STEWART, KOLASCH & BIRCH, LLP  
8110 Gatehouse Road  
Suite 100 East  
P.O. Box 747  
Falls Church, Virginia 22040-0747  
(703) 205-8000  
Attorney for Applicant